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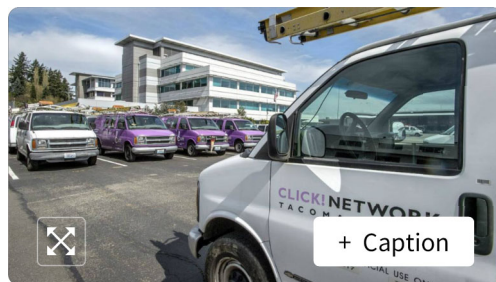
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SOUTH SOUND NEWS

Tacoma gets a win in Click lawsuit, but a higher court might have the final say



By **Alexis Krell**

December 11, 2019 at 5:06 pm

PST



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December 11, 2019 at 5:06 pm

PST

TACOMA, Wash. — Tacoma has won an appeal in a lawsuit by ratepayers who argued Tacoma Power funds have illegally subsidized Click, the city's internet and cable network.

Pierce County Superior Court Judge Susan Serko ruled in favor of the ratepayers last year, ordering that the Tacoma Power funds couldn't be used to pay for Click.

A panel of Division II of the state Court of Appeals reversed that decision Tuesday in a 2-1 opinion.

"The whole telecommunications system is just one network of wires," Judge Rich Melnick wrote in part of the majority opinion, which was also signed by Judge Rebecca Glasgow. "Additionally, in deciding to implement the system, the City focused on the benefits that Tacoma Power would receive with regard to electric generation, transmission and

distribution.

“The system’s potential cable TV and internet service capabilities were incidental and merely a way to maximize the new technology’s potential.”

Among the ratepayers who sued were former Tacoma mayor Mike Crowley, former Tacoma Public Utilities director Ted Coates and former TPU attorney Mark Bubenik.

The ratepayers and the city disagreed about whether Click counts as a “betterment” of Tacoma Power under the city charter.

Melnick wrote: “The fact that Click! is currently not independently profitable does not necessarily render it no longer a betterment. Rather, the City is attempting to maximize use of its resource, the telecommunications system, by utilizing the system’s excess capacity to sell cable TV and internet service. Because Click! is a betterment of Tacoma Power, we conclude that it does not violate the Tacoma City Charter.”

The City Attorney’s office said in a statement: “The Court of Appeals ruled today that prior use of Tacoma Power revenues to support Click! Cable TV and internet services was lawful. ... Although the City is pleased with the decision, the plaintiffs may seek review of the decision by the State Supreme Court and if that court accepts review the litigation will continue.”

Judge George Fearing disagreed with the majority.

“Because ratepayers of the City of Tacoma’s electrical utility must, under current practices, subsidize the distinct endeavors of Internet service access and cable television delivery, Tacoma must cease these unprofitable activities or at least stop charging expenses of such services to ratepayers,” he wrote in a dissenting opinion.

Fearing’s opinion goes on to say that Click loses about \$5 million a year, and that:

“Characterizing Click! as the same undertaking or public service industry as the electrical utility allows a pet project of some politicians to survive despite its onus on electricity ratepayers. The onus particularly inflicts economic harm on the poor since Tacoma Power enjoys a monopoly when transmitting electricity, an essential service for all residents of Tacoma, and the poor pay a higher percentage of their income on utilities.”

Click has also faced other legal challenges this year. [**Those cases argue that — without putting the issue to voters — a private-public partnership with Rainier Connect to manage the network violates the city’s charter.**](#)

“Today’s Court decision does not impact the City Council and Public Utility Board’s recent approval of the expansion of the current partnership with family-owned internet provider, Rainier Connect, and its commitment to ensure the 12 community policy goals are met, which include safeguarding continued public ownership of the Click! Network, preserving competition, maintaining low-income affordability, preserving net neutrality and customer privacy, and the financial viability of the system,” the City Attorney’s office said in its statement.

“The City’s transition to Rainier Connect providing Click! services should be finalized in the second quarter of 2020.”

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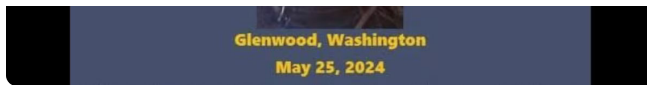
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